

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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|--------------------------|---|--------------------|
| VALERIE HODGES, |) | CASE NO. 8:11CV262 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | MEMORANDUM |
| |) | AND ORDER |
| SHELLY BURGHARDT, GLENDA |) | |
| GREEN, and O.P.S., |) | |
| |) | |
| Defendants. |) | |

This matter is before the court on its own motion. On September 29, 2011, the court conducted an initial review of Plaintiff's Complaint and found that Plaintiff failed to state a claim upon which relief may be granted as to all claims asserted. (Filing No. [7](#).) In particular, the court determined that:

Plaintiff does not allege that she is at least 40 years old. (Filing No. [1](#).) Further, although she alleges that she met the qualifications of the position and that Defendants hired a "much younger female" for the position, she does not allege that age was the primary motivating factor in her termination. (*Id.*) As such, Plaintiff's allegations are insufficient to nudge her ADEA claims across the line from conceivable to plausible.

(*Id.* at CM/ECF p. 3.) In light of these pleading deficiencies, the court granted Plaintiff an opportunity to amend.

In response, Plaintiff filed documents on October 4, 2011, and October 12, 2011, which the Clerk of the court docketed as Supplements. (Filing Nos. [8](#) and [9](#).) While these documents show that Plaintiff is over 40 years old, the documents do not include any additional allegations. Further, even liberally construed, the documents do not show that age was a primary motivating factor in Plaintiff's termination. Thus, after careful review of the Supplements, the court finds that Plaintiff has failed to state a claim upon which relief may be granted. See [Ashcroft v. Iqbal](#), 129 S. Ct. 1937, 1950 (2009), ("A claim has facial

plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”); [Martin v. Sargent, 780 F.2d 1334, 1337 \(8th Cir. 1985\)](#), (holding that, regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim). For these reasons, and the reasons set forth in the court’s September 29, 2011, Memorandum and Order, this matter is dismissed without prejudice.

IT IS THEREFORE ORDERED that:

1. This matter is dismissed without prejudice because the Supplements, liberally construed as an Amended Complaint, fail to state a claim upon which relief may be granted; and
2. A separate judgment will be entered in accordance with this Memorandum and Order and the court’s September 29, 2011, Memorandum and Order.

DATED this 12th day of January, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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